

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Annual Compliance Report, 2017

Docket No. ACR2017

NOTICE OF A PRELIMINARY DETERMINATION TO UNSEAL THE MATERIAL FILED
IN RESPONSE TO CHAIRMAN'S INFORMATION REQUEST NO. 1, QUESTION 1

(Issued January 17, 2018)

I. INTRODUCTION

Chairman's Information Request No. 1, question 1 requested that the Postal Service file Inbound Letter Post revenue data by country group and shape as described in Order No. 4215.¹ On January 12, 2018, the Postal Service filed its response to CHIR No. 1, question 1, under seal.²

¹ Chairman Information Request No.1, January 5, 2018, question 1 (CHIR No. 1) (citing Docket No. R2018-1, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, November 9, 2017, at 36 (Order No. 4215)).

² Responses of the United States Postal Service to Questions 1-16 of Chairman's Information Request No. 1, January 12, 2018, question 1 (Response to CHIR No. 1). See Notice of the United States Postal Service of Filing of USPS-FY17-NP31 and Application for Nonpublic Treatment, January 12, 2018 (Notice of Filing USPS-FY17-NP31).

II. BACKGROUND

In Docket No. R2018-1, the U.S. Chamber of Commerce filed a motion that sought to unseal Library Reference USPS–LR–R2018–1/NP1, First-Class Mail International and Inbound Letter Post Workpapers.³ In a subsequent motion, the U.S. Chamber of Commerce limited the scope of its Motion to Unseal and requested the Commission unseal data that is necessary to calculate Inbound Letter Post revenues by country group.⁴ In Order No. 4215, the Commission found that the Motion to Unseal did not satisfy the requirement that it specifically challenge the pertinent rationales relied upon in the Postal Service’s Application for Non-Public Treatment. Order No. 4215 at 34-35; see 39 C.F.R. § 3007.31. However, the Commission stated that it believed that the information requested by the U.S. Chamber of Commerce in its Motion for Leave could improve transparency related to international mail prices. Order No. 4215 at 35-36. The Commission encouraged the “Postal Service to provide *publicly* available Inbound Letter Post revenue data by country group and shape in its FY 2017 Annual Compliance Report[.]” *Id.* at 36 (emphasis added).

III. PRELIMINARY DETERMINATION TO UNSEAL THE MATERIAL FILED IN RESPONSE TO CHIR NO. 1, QUESTION 1

The Postal Service filed its Response to CHIR No. 1, question 1 under seal in Library Reference USPS–FY17–NP31. Response to CHIR No. 1, question 1. In the Notice of Filing USPS–FY17–NP31, the Postal Service states that the data requested by CHIR No. 1 include commercially sensitive information regarding volume, revenue, and markets for the Postal Service’s inbound market dominant products and competitive products. Notice of Filing USPS–FY17–NP31 at 1. The Postal Service states that the material consists of types of information customarily submitted under

³ Docket No. R2018-1, U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 16, 2017 (Motion to Unseal).

⁴ See Docket No. R2018-1, US Chamber of Commerce Motion for Leave to Comment on the Postal Service’s Answer to Chairman’s Information Request No. 6, November 2, 2017 (Motion for Leave).

seal. *Id.* The Postal Service also states that its Response to CHIR No. 1, question 1 “may be considered proprietary by third parties” because it “could give indications of non-public volume information of [Universal Postal Union] Designated Operators[.]” *Id.* at 2. The Postal Service also incorporates by reference its Application for Non-Public Treatment that it filed with the FY 2017 Annual Compliant Report (ACR).⁵

In Order No. 4215, the Commission presumed that the aggregated Inbound Letter Post revenue data would be available publicly. Order No. 4215 at 36. Because the data is aggregated, the Commission expected that the concerns that have typically caused disaggregated versions of the same data to be filed non-publicly would have been alleviated by the aggregation of data. The statements made by the Postal Service in the Notice of Filing USPS–FY17–NP31 are insufficient to explain why the aggregated data should be maintained under seal.

This is the first time the Postal Service provided Inbound Letter Post revenue data aggregated by country group and shape. Thus, the statement that material filed in USPS–FY17–NP31 consists of types of information customarily submitted under seal does not apply to the aggregated Inbound Letter Post revenue data. Similarly, because the Inbound Letter Post revenue data is aggregated by country group and shape, the data is distinguishable from the disaggregated Inbound Letter Post revenue data discussed in the Application for Non-Public Treatment.⁶ Accordingly, the justification for the disaggregated revenue data’s non-public status provided in the Application for Non-Public Treatment does not apply to the aggregated revenue data.

Pursuant to 39 C.F.R. § 3007.32(a), the Commission preliminarily determines that the material filed in Response to Chairman’s Information Request No.1, question 1

⁵ United States Postal Service FY 2017 Annual Compliance Report, December 29, 2017 (FY 2017 ACR). The Postal Service included the Application for Non-Public Treatment as Attachment Two (Application for Non-Public Treatment).

⁶ See Application for Non-Public Treatment at 14-15, 18, 21-22. The Postal Service’s discussion relating to potential commercial harms focuses on the disclosure of data disaggregated by designated operators or by private entity other than a foreign postal operator such as negotiated service agreement partners. *Id.* at 14-15.

should be unsealed. Pursuant to 39 C.F.R. § 3007.32(b), any interested person, including the Postal Service, may file a response to this notice. Responses are due no later than January 24, 2018. Responses that maintain that the material filed in Response to CHIR No. 1, question 1 should remain non-public should: (1) identify the nature or extent of commercial harm that may result from public disclosure and the likelihood of such harm; (2) provide a specific hypothetical illustrative example of each alleged commercial harm; and (3) identify any third party who is known to have a proprietary interest in the aggregated Inbound Letter Post data.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission preliminarily determines that the material filed in Response to Chairman's Information Request No.1, question 1 should be unsealed.
2. Responses to this notice are due no later than January 24, 2018.

By the Commission.

Stacy L. Ruble
Secretary